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August 31, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

93-162 /

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

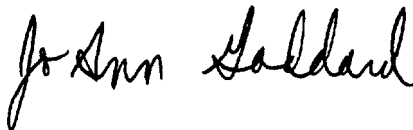
Re: *CC Docket No. 91-141 - Expanded Interconnection with Local Telephone
Company Facilities*

*CC Docket No. 93-162, Transmittal Nos. 1613, 1630 - Revisions to
Tariff F.C.C. No. 128*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Reply to MCI's Opposition To Expedited Waiver" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petition for Expedited Waiver of)
Section 64.1401(c)(1) of the)
Commission's Rules which codifies)
the Virtual Collocation Tariffing)
Requirement Concerning Intrastate)
Arrangements)
)
Expanded Interconnection with)
Local Telephone Company Facilities)
)
Pacific Bell)
Revisions to Tariff FCC No. 128)
)
_____)

CC Docket No. 91-141

CC Docket No. 93-162

Transmittal NOS. 1613, 1630

PACIFIC BELL'S REPLY TO
MCI'S OPPOSITION TO EXPEDITED WAIVER

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Date: August 31, 1993

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SUMMARY

In its opposition, MCI agrees that Pacific Bell's intrastate arrangement with Teleport is a "'special' -- and, hence, non-tariffable -- configuration" that "lacks broader, more general value...." In addition, MCI does not indicate in its opposition that it wants to purchase interstate virtual collocation from Pacific Bell and does not offer any other evidence of interstate demand for virtual collocation in California. Moreover, MCI does not attempt to demonstrate that Pacific Bell's tariffing of interstate virtual collocation would avoid the creation of the unnecessary risks of harm to the public interest that were identified in Pacific Bell's petition for waiver.

MCI's pleading, together with the lack of any other opposition to Pacific Bell's petition for waiver, confirms Pacific Bell's conclusion that there would be no benefit to the public from applying the federal virtual collocation tariffing requirement to Pacific Bell and that to do so would be inconsistent with the public interest. Consistent with the Commission's waiver-proceeding "obligation to seek out the 'public interest' in particular, individualized cases," the Commission should grant Pacific Bell's waiver request.

MCI argues that Pacific Bell should have filed a petition for reconsideration rather than a petition for waiver. In our petition, we did not question the validity of the general rule, but asked for a waiver based on Pacific

Bell's individualized circumstances (i.e., our unique intrastate arrangement with Teleport). Accordingly, we did not ask the Commission to reconsider the general rule, but to consider whether or not applying it to Pacific Bell is in the public interest. Therefore, MCI's argument that we used the wrong procedural vehicle is without merit.

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PACIFIC BELL'S REPLY TO
MCI'S OPPOSITION TO EXPEDITED WAIVER

I. INTRODUCTION

Pacific Bell submits these reply comments in response to the opposition by MCI Telecommunications Corporation ("MCI") to our Petition for Expedited Waiver of the federal virtual collocation tariffing requirement. Pacific Bell has requested a narrow waiver of the

requirement as it applies to our singular intrastate arrangement with Teleport.¹

In this reply, we show that MCI's opposition does not address, let alone rebut, the rationale supporting our waiver request. Our request is that Pacific Bell's extremely limited intrastate arrangement with Teleport not be deemed the expanded interconnection form of virtual collocation that was envisioned by the Commission as creating a good substitute for physical collocation. Our arrangement does not provide evidence that there will be any demand for virtual collocation in California as Pacific Bell implements physical collocation. Therefore, applying the interstate tariffing requirement to Pacific Bell will not further the Commission's public interest goals, will cause Pacific Bell to incur costs of offering virtual collocation that are unlikely to be recovered through virtual collocation sales, and will unnecessarily affect state proceedings on expanded interconnection.

¹ According to its August 3, 1993, News Release, the Commission, in its meeting on that date, decided on reconsideration of certain aspects of the Expanded Interconnection Order that "if a LEC tariffs intrastate virtual collocation, it need not tariff interstate virtual collocation in the full subset of LEC facilities designated for collocation in the study area, but rather only in the actual LEC facilities subject to an intrastate tariffing requirement." FCC News Release, "Certain Aspects Of Special Access Expanded Interconnection Ruling Reconsidered (CC Dkt. 91-141)," Action in Docket Case, August 3, 1993, p. 2. As these reply comments are being written, the order on reconsideration has not been released.

II. MCI DOES NOT DISPUTE THAT PACIFIC BELL'S INTRASTATE ARRANGEMENT IS UNIQUE OR THAT THERE IS A LACK OF INTERSTATE DEMAND FOR THAT ARRANGEMENT

In its opposition, MCI agrees that Pacific Bell's intrastate arrangement with Teleport is a "'special' -- and, hence, non-tariffable -- configuration"² that "lacks broader, more general value...."³ In addition, MCI does not indicate in its opposition that it wants to purchase interstate virtual collocation from Pacific Bell and does not offer any other evidence of interstate demand for virtual collocation in California. Although MCI mentions the "needs" of Pacific Bell's customers⁴ and the Commission's "goals of competition,"⁵ MCI does not attempt to relate Pacific Bell's potential offering of interstate virtual collocation to those needs or goals.⁶ Moreover, MCI

² MCI, p. 5. In California, Pacific Bell tariffed this arrangement as a Special Service Arrangement, but not as a general tariff offering.

³ Id. at 6.

⁴ Id. at 4, 7.

⁵ Id. at 6.

⁶ MCI's reliance on vague references to customer needs and Commission goals is inconsistent with the Commission's recognition of the importance of requiring the LECs to tariff expanded interconnection only where there is a strong indication of near-term demand for it. In the case of physical collocation, the Commission reduced the requirement for tariffing expanded interconnection to include only those central offices in which interconnectors were likely to demand it "in the near future" and cautioned interconnectors that they "should only request those additional offices where they intend to seek interconnection within the twelve months following the effectiveness of the expanded interconnection tariffs." Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, Memorandum Opinion and Order, 8 FCC Rcd. 127, paras. 9, 13 (1992).

does not attempt to demonstrate that Pacific Bell's tariffing of interstate virtual collocation would avoid the creation of the unnecessary risks of harm to the public interest that were identified in Pacific Bell's petition for waiver.

MCI's pleading, together with the lack of any other opposition to Pacific Bell's petition for waiver, confirms Pacific Bell's conclusion that there would be no benefit to the public from applying the federal virtual collocation tariffing requirement to Pacific Bell and that to do so would be inconsistent with the public interest. Consistent with the Commission's waiver-proceeding "obligation to seek out the 'public interest' in particular, individualized cases,"⁷ the Commission should grant Pacific Bell's waiver request.

MCI raises an irrelevant argument against our waiver request by stating that Teleport originally asked Pacific Bell for "actual" (i.e., physical) collocation, but settled for a narrow form of virtual collocation instead.⁸ The positions taken by Teleport in a state proceeding are irrelevant to Pacific Bell's waiver request. MCI cannot bootstrap Pacific Bell into being denied a waiver of the Commission's virtual collocation tariffing requirement by arguing that Pacific Bell should have provided the broader

⁷ WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), appeal after remand, 459 F.2d 1203, cert. denied, 409 U.S. 1027 (1972).

⁸ MCI, p. 6. See also MCI, pp. 4-5.

type of collocation ultimately shaped by the Commission. The federal requirement relates to the intrastate provision of service, not to positions taken by parties in state proceedings or to MCI's view of what should have been provided.

In any event, Teleport's original statements that it desired physical collocation cannot logically be used to support a requirement that Pacific Bell tariff interstate virtual collocation now that Pacific Bell does indeed offer interstate physical collocation. In fact, Teleport's statements at the California PUC that it wanted physical collocation support Pacific Bell's conclusion that "[o]nce Pacific Bell has implemented physical collocation, we expect that our intrastate arrangement will cease to be of value to Teleport."⁹

MCI's assertions also are without merit concerning our showing of potential harm to both Pacific Bell and our customers from applying the requirement to Pacific Bell. MCI asserts that we have not shown that the risks of harm are unique to Pacific Bell as opposed to other LECs.¹⁰ The risks of harm, however, need not be unique. It is the uniqueness of Pacific Bell's intrastate arrangement with Teleport that is relevant here. Because of the nature of Pacific Bell's arrangement, it provides no evidence of

⁹ Pacific Bell's Petition For Waiver, p. iii.

¹⁰ MCI, pp. 6-7.

interstate demand for virtual collocation in Pacific Bell's territory,¹¹ unlike the virtual collocation arrangements in Ameritech's and various other LECs' territories.¹² Thus, applying the requirement to Pacific Bell would create unjustified and greater risk of wasted investment and expense, to the detriment of Pacific Bell and its customers.

Finally, MCI does not attempt to justify the unnecessary interference with state proceedings that would result from applying the federal virtual collocation tariffing requirement to Pacific Bell solely because of the unique intrastate arrangement with Teleport.¹³ Instead, MCI simply quotes the Commission's statement in the Expanded Interconnection Order that it is not preempting the states.¹⁴

Pacific Bell did not assert that the Commission's requirement preempted the states, but that it unnecessarily interfered with the California PUC's proceedings on expanded interconnection. In the very Commission statement quoted by MCI, the Commission pointed out that "the Expanded Interconnection Order may have indirect effects on the

¹¹ See Pacific Bell's Petition For Waiver, pp. 9-15.

¹² See, e.g., Ameritech Transmittal No. 697, February 16, 1993, which "renames and modifies the Ameritech Operating Companies' (AOCs') currently effective Optical Interconnection Service (virtual collocation) tariff in the AOCs' F.C.C. No. 2, Section 16. See also Pacific Bell's Petition For Waiver, pp. 13-14.

¹³ See Pacific Bell's Petition For Waiver, pp. 15-18.

¹⁴ MCI, p. 8.

states...."¹⁵ This is especially pertinent with regard to the federal virtual collocation tariffing requirement because it is triggered by intrastate activity. Accordingly, here it is particularly important that the Commission meet the "obligation to seek out the 'public interest' in particular, individualized cases."¹⁶ Since applying the federal tariffing requirement to Pacific Bell would not further the Commission's public interest goals, the Commission should avoid creating indirect effects on the California PUC's proceedings.

In sum, MCI's arguments against Pacific Bell's showing of good cause for a waiver do not rebut our position and, in fact, bolster it. Applying the federal tariffing requirement to Pacific Bell would be inconsistent with the public interest.

III. MCI MISAPPREHENDS THE DIFFERENCE BETWEEN A PETITION FOR WAIVER AND A PETITION FOR RECONSIDERATION

MCI argues that Pacific Bell should have filed a petition for reconsideration rather than a petition for waiver and that our petition for waiver is untimely.¹⁷ MCI attempts to support these arguments by stating that "Pacific

¹⁵ Id. quoting Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, para. 13 (1992) ("Expanded Interconnection Order").

¹⁶ WAIT Radio v. FCC, 418 F.2d at 1157.

¹⁷ MCI, p. 4.

has petitioned for...a waiver despite the fact that the Commission clarified that it was carriers such as Pacific at whom the tariffing requirement was directed."¹⁸ MCI states that the Commission ordered Pacific Bell to file an interim tariff, that Pacific Bell filed the interim tariff without petitioning for reconsideration, and that the Commission later "ordered Pacific 'to file a tariff offering virtual collocation to the same extent that it has tariffed physical collocation.'"¹⁹

In our petition for waiver, we did not dispute that the Commission's federal virtual collocation tariffing rule currently applies to Pacific Bell. That, in fact, is the reason that we filed a petition for waiver of the rule. If, based on our description of Pacific Bell's unique arrangement with Teleport, the Commission determines that the rule does not apply to Pacific Bell's arrangement, the Commission may, on its own motion, issue a declaratory ruling to that effect.²⁰ Contrary to MCI's implications,

¹⁸ Id. at 2.

¹⁹ Id. at 3-4. MCI also asserts that Pacific Bell "subsequently withdrew its interim offering, in defiance of the Commission's directive." Id. at 3. Pacific Bell's withdrawal of its interim tariff met the Commission's requirement. The Commission required that the interim tariffs remain in place only until the LECs filed permanent expanded interconnection tariffs. See Expanded Interconnection Order, para. 262 and n. 609. Pacific Bell waited to withdraw its interim tariff until its Expanded Interconnection Service tariff for physical collocation went into effect, and no one objected to the withdrawal.

²⁰ 47 C.F.R. § 1.2 (1992).

this would not require reconsideration of the validity of the rule itself.

In our petition, we did not question the validity of the general rule, but asked for a waiver based on Pacific Bell's individualized circumstances (i.e., our unique intrastate arrangement with Teleport). Unlike reconsideration, "[t]he very essence of waiver is the assumed validity of the general rule, and also the applicant's violation unless waiver is granted."²¹ Accordingly, we did not ask the Commission to reconsider the general rule, but to consider whether or not applying it to Pacific Bell is in the public interest. Therefore, MCI's argument that we used the wrong procedural vehicle is without merit.

MCI's argument does not gain any strength from its assertions that Pacific Bell already met the requirement that it file an interim federal virtual collocation tariff. The interim requirement is separate and distinct from the permanent requirement.

On an interim basis, Pacific Bell and some other LECs were required to file "federal tariffs allowing interstate special access traffic to be carried over existing state arrangements pursuant to state rates except for the contribution charge."²² Requiring Pacific Bell to tariff the arrangement on an interim basis as nearly a

²¹ WAIT Radio v. FCC, 418 F.2d at 1158.

²² Expanded Interconnection Order, para. 262.

"mirror image" of our intrastate arrangement did not further the public interest, but caused minimal harm. In its response to our interim tariff filing, MFS described the uniqueness of our arrangement with Teleport.²³ That description, together with the lack of any demand for service under our interim tariff, provided evidence that the nature of Pacific Bell's intrastate arrangement justifies a waiver for Pacific Bell of the Commission's permanent, general virtual collocation tariffing requirement. Therefore, contrary to MCI's argument, experience with the interim requirement supports Pacific Bell's petition for waiver.

MCI is also wrong when it argues that our petition for waiver is untimely. The Commission may waive its rules "at any time."²⁴ Moreover, we filed our petition for waiver soon after the Common Carrier Bureau ordered that "Pacific is required to file a tariff offering virtual collocation to the same extent that it has tariffed physical collocation."²⁵ Pursuant to Special Permission No. 93-602, we deferred the filing of Pacific Bell's virtual collocation

²³ See Pacific Bell's Petition For Waiver, pp. 13-15.

²⁴ 47 C.F.R. § 1.3 (1992).

²⁵ Ameritech, et al. Revisions to Tariff FCC No. 2, CC Dkt. No. 93-162, Order, 8 F.C.C. Rcd. 4589, para. 71 (1993).

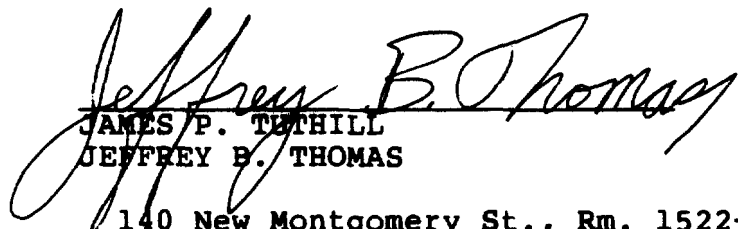
tariff pending resolution of our petition for waiver.²⁶
Therefore, Pacific Bell's waiver request is timely.

IV. CONCLUSION

For all the above reasons, MCI's opposition to Pacific Bell's Petition For Expedited Waiver is without merit. Pacific Bell has shown good cause for a waiver of the federal virtual collocation tariffing requirement that is triggered by the provision of an intrastate arrangement. Accordingly, the Commission should grant Pacific Bell's waiver request.

Respectfully submitted,

PACIFIC BELL



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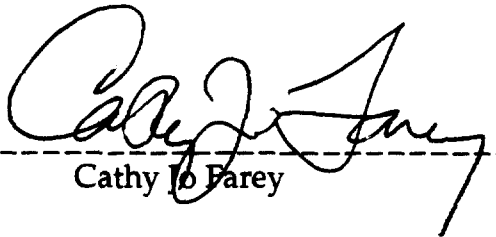
Its Attorneys

Date: August 31, 1993

²⁶ Letter from A. E. Swan, Pacific Bell, to William F. Caton, Acting Secretary, FCC, dated July 16, 1993, regarding CC Dkt. Nos. 91-141 and 93-162.

CERTIFICATE OF SERVICE

I, Cathy Jo Farey, do hereby certify that a copy of the foregoing Reply to MCI's Opposition to Expedited Waiver was sent via first class mail, postage paid, to the party listed below.



Cathy Jo Farey

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